



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91473; File No. SR-BX-2021-009]

### **Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BX Options 7, Section 1, “General Provisions,” and Options 7, Section 2, “BX Options Market- Fees and Rebates”**

April 5, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 22, 2021, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend BX Options 7, Section 1, “General Provisions,” and Options 7, Section 2, “BX Options Market- Fees and Rebates.”

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### **II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BX’s Pricing Schedule at Options 7, Section 1, “General Provisions,” and Options 7, Section 2, “BX Options Market-Fees and Rebates.” The Exchange proposes to remove the current fees, rebates and tier schedules applicable to Penny Symbols and Non-Penny Symbols. Today, the Penny and Non-Penny fees and rebates are based on volume tiers and consider contra-parties to a transaction. With this proposal, BX’s pricing will no longer be tiered and will not consider the contra-party, unless otherwise specified. Further, the proposed changes will replace the existing pricing schedule with a new maker/taker fee structure where market participants are assessed a rebate or lower fee for adding liquidity to the market, or charged a higher fee for removing liquidity from the market. This new pricing model is intended to reward Participants that bring order flow to the Exchange and thereby increase liquidity and trading opportunities for all market participants. BX believes that the proposed pricing model will encourage additional order flow to be sent to the Exchange, and contribute to a more active and quality market in BX-listed options to the benefit of all market participants that trade on the Exchange.

The current pricing schedule for Penny and Non-Penny Symbols is as follows:

**Fees and Rebates (per executed contract)**

	<b>Customer</b>	<b>Lead Market Maker</b>	<b>BX Options Market Maker</b>	<b>Non-Customer Firm</b> <sup>1</sup>	
<b>Penny Symbols:</b>					
<b>Rebate to Add # Liquidity</b>		\$0.11 <sup>2</sup>	\$0.10 <sup>2</sup>	N/A	N/A
<b>Fee to Add # Liquidity</b>		\$0.38 <sup>3</sup>	\$0.39 <sup>3</sup>	\$0.45	\$0.45

<b>Rebate to Remove Liquidity</b>	#	N/A	N/A	N/A	N/A
<b>Fee to Remove Liquidity</b>	N/A	#	#	\$0.46	\$0.46
<b>Non-Penny Symbols:</b>					
<b>Rebate to Add Liquidity</b>	*	N/A	N/A	N/A	N/A
<b>Fee to Add Liquidity</b>	*	\$0.50/\$0.95 <sup>4</sup>	\$0.50/\$0.95 <sup>4</sup>	\$0.98	\$0.98
<b>Rebate to Remove Liquidity</b>	*	N/A	N/A	N/A	N/A
<b>Fee to Remove Liquidity</b>	N/A	*	*	\$0.89	\$0.89

For purposes of the above fees and rebates, a Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker.<sup>3</sup> The Rebate to Add Liquidity is paid to a BX Options Market Maker or a Lead Market Maker only when the BX Options Market Maker or Lead Market Maker is contra to a Non-Customer, Firm, BX Options Market Maker, or Lead Market Maker.<sup>4</sup> The Fee to Add Liquidity is assessed to a BX Options Market Maker or a Lead Market Maker only when the BX Options Market Maker or Lead Market Maker is contra to a Customer.<sup>5</sup> Finally, the higher Fee to Add Liquidity is assessed to a BX Options Market Maker or a Lead Market Maker only when the BX Options Market Maker or Lead Market Maker is contra to a Customer.<sup>6</sup>

The current Penny Symbol tier schedule is as follows:

#### # Penny Symbols Tier Schedule

<b>Rebate to Add Liquidity</b>	<b>Fee to Add Liquidity</b>	<b>Rebate to Remove Liquidity</b>	<b>Fee to Remove Liquidity</b>	<b>Fee To Remove Liquidity</b>
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<sup>3</sup> See note 1 within Options 7, Section 2.

<sup>4</sup> See note 2 within Options 7, Section 2.

<sup>5</sup> See note 3 within Options 7, Section 2.

<sup>6</sup> See note 4 within Options 7, Section 2.

	<b>When:</b>	<b>Customer</b>	<b>Customer</b>	<b>Customer</b>	<b>Lead Market Maker or BX Options Market Maker</b>	<b>Lead Market Maker or BX Options Market Maker</b>
	<b>Trading with:</b>	<b>Non- Customer, Lead Market Maker, BX Options Market Maker, or Firm</b>	<b>Customer</b>	<b>Non- Customer, Lead Market Maker, BX Options Market Maker, Customer, or Firm</b>	<b>Customer</b>	<b>Non- Customer, Lead Market Maker, BX Options Market Maker, or Firm</b>
Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.39	\$0.00	\$0.39	\$0.46
Tier 2	Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	\$0.10	\$0.39	\$0.25	\$0.39	\$0.46
Tier 3	Participant executes 0.15% or more of total industry customer equity and	\$0.20	\$0.39	\$0.35	\$0.30	\$0.46

ETF option  
ADV  
contracts  
per month

The current Non-Penny Symbol tier schedule is as follows:

\* Non-Penny Symbols Tier Schedule

		<b>Rebate to Add Liquidity</b>	<b>Fee to Add Liquidity</b>	<b>Rebate to Remove Liquidity</b>	<b>Fee to Remove Liquidity</b>	<b>Fee To Remove Liquidity</b>
	<b>When:</b>	<b>Customer</b>	<b>Customer</b>	<b>Customer</b>	<b>Lead Market Maker or BX Options Market Maker</b>	<b>Lead Market Maker or BX Options Market Maker</b>
	<b>Tradingwith:</b>	<b>Non- Customer, Lead Market Maker, BX Options Market Maker, or Firm</b>	<b>Customer</b>	<b>Non- Customer, Lead Market Maker, BX Options Market Maker, Customer, or Firm</b>	<b>Customer</b>	<b>Non-Customer, Lead Market Maker, BX Options Market Maker, or Firm</b>
Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.85	\$0.80	\$0.89	\$0.89
Tier 2	Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	\$0.10	\$0.85	\$0.80	\$0.89	\$0.89
Tier 3	Participant executes 0.15% or more of total industry	\$0.20	\$0.85	\$0.80	\$0.60	\$0.89

customer equity and ETF option ADV contracts per month						
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The Exchange now proposes to remove the above-referenced current fees, rebates and tier schedules. The Exchange proposes to amend the introductory paragraph which states, “The following charges shall apply to the use of the order execution and routing services of the BX Options market for all securities” by replacing the term “charges” with the term “pricing.” The Exchange also proposes to amend Options 7, Section 2(1) which states, “Fees for Execution of Contracts on the BX Options Market.” The Exchange proposes to instead provide, “Fees and Rebates for Execution of Contracts on the BX Options Market.” Both of these changes are to account for rebates that are also offered to BX Participants.

The Exchange proposes to adopt the following Penny and Non-Penny Symbol fees and rebates in Options 7, Section 2(1):

(1) Fees and Rebates for Execution of Contracts on the BX Options Market:

**Penny Symbols**

<b>Market Participant</b>	<b>Maker Rebate</b>	<b>Taker Fee</b>
Lead Market Maker	(0.29)	\$0.46
Market Maker	(0.25)	\$0.46
Non-Customer	(0.12)	\$0.46
Firm	(0.12)	\$0.46
Customer	(\$0.30)	\$0.46

**Non-Penny Symbols**

<b>Market Participant</b>	<b>Maker Rebate / Fee</b>	<b>Taker Fee</b>
Lead Market Maker	(0.45)	\$1.10
Market Maker	(0.40)	\$1.10
Non-Customer	\$0.45	\$1.10
Firm	\$0.45	\$1.10
Customer	(\$0.90)	\$0.65

The Exchange proposes to reduce the Customer Taker Fee to \$0.26 per contract for trades which remove liquidity in SPY.<sup>7</sup> Also, the Exchange proposes to offer a Maker Rebate for Lead Market Makers and Market Makers in SPY of \$0.22 per contract. Finally, the Exchange proposes to offer a Maker Rebate for Lead Market Makers and Market Makers in AAPL, IWM, GLD, QQQ, SLV, and TSLA of \$0.42 per contract.<sup>8</sup> The proposed fees and rebates are described in greater detail below.

### Penny Symbols

With respect to the impact on pricing for Penny Symbols, the Exchange notes the below changes in pricing.

#### *Lead Market Makers*

Today, Lead Market Makers receive a Penny Symbol Rebate to Add Liquidity of \$0.11 per contract only when the Lead Market Maker is contra to a Non-Customer, Firm, BX Options Market Maker, or Lead Market Maker. Today, Lead Market Makers receive no Penny Symbol Rebates to Remove Liquidity. Today, Lead Market Makers pay a \$0.38 per contract Penny Symbol Fee to Add Liquidity only when the Lead Market Maker is contra to a Customer. Today, Lead Market Makers pay a Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranges from \$0.39 to \$0.30 per contract.<sup>9</sup> Today, Lead Market Makers pay a Penny Symbol Fee to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker or Firm of \$0.46 per contract, regardless of tier.<sup>10</sup>

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<sup>7</sup> See proposed note 1 to Options 7, Section 2.

<sup>8</sup> See proposed note 2 within Options 7, Section 2.

<sup>9</sup> Participants that executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of \$0.39 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of \$0.39 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of \$0.30 per contract in Tier 3.

<sup>10</sup> Participants that executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of \$0.46

With this proposal, Lead Market Maker orders would receive a Maker Rebate of \$0.29 per contract in all Penny Symbols, except SPY which would pay a Maker Rebate of \$0.22 per contract, and except AAPL, IWM, GLD, QQQ, SLV, and TSLA which would pay a Maker Rebate of \$0.42 per contract. With this proposal, Lead Market Maker orders would pay a Penny Symbol Taker Fee of \$0.46 per contract.

The proposed Penny Symbol Maker Rebates for Lead Market Maker orders, for all Penny Symbols, are higher than the current Lead Market Maker Penny Symbol Rebate to Add Liquidity of \$0.11 per contract when trading against Non-Customer, Firm, BX Options Market Maker or Lead Market Maker. Also, the proposed Penny Symbol Maker Rebates for Lead Market Maker orders do not consider the contra-party. The proposed Penny Symbol Taker Fee for Lead Market Maker orders of \$0.46 per contract is higher than the current Lead Market Maker tiered Penny Symbol Fees to Remove Liquidity when trading against a Customer which range from \$0.39 to \$0.30 per contract<sup>11</sup> and is the same as the current Lead Market Maker tiered Penny Symbol Fee to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker or Firm of \$0.46 per contract regardless of tier.<sup>12</sup> BX would no longer assess a fee to add liquidity for Lead Market Maker orders, rather Participants would obtain the Maker Rebate regardless of contra-party.

#### *Market Maker*

Today, BX Options Market Makers receive a Penny Symbol Rebate to Add Liquidity of \$0.10 per contract only when the BX Options Market Maker is contra to a Non-Customer, Firm, or BX Options Market Maker. Today, BX Options Market Makers receive no Penny Symbol

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per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of \$0.46 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of \$0.46 per contract in Tier 3.

<sup>11</sup> See note 9 above.

<sup>12</sup> See note 10 above.



Rebate to Remove Liquidity. Today, BX Options Market Makers pay a \$0.39 per contract Penny Symbol Fee to Add Liquidity only when the BX Options Market Maker is contra to a Customer. Today, BX Options Market Makers pay a Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranges from \$0.39 to \$0.30 per contract.<sup>13</sup> Today, BX Options Market Makers pay a Penny Symbol Fee to Remove Liquidity when trading against a Non-Customer, BX Options Market Maker or Firm of \$0.46 per contract, regardless of tier.<sup>14</sup>

With this proposal, the Exchange would rename “BX Options Market Maker” as “Market Maker.” With this proposal, Market Maker orders would receive a Maker Rebate of \$0.25 per contract in all Penny Symbols, except SPY which would pay a Maker Rebate of \$0.22 per contract, and except AAPL, IWM, GLD, QQQ, SLV, and TSLA which would pay a Maker Rebate of \$0.42 per contract. With this proposal, Market Maker orders would pay a Penny Symbol Taker Fee of \$0.46 per contract.

The proposed Maker Rebates for Penny Symbol Market Maker orders, for all Penny Symbols, are higher than the current Market Maker Penny Symbol Rebate to Add Liquidity of \$0.10 per contract when trading against Non-Customer, Firm, BX Options Market Maker, or Lead Market Maker and the proposed rebate does not consider the contra-party. The proposed Penny Symbol Taker Fee for Market Maker orders is higher than the current Market Maker

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<sup>13</sup> Participants that executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month would pay a Penny Symbol Fee to Remove Liquidity of \$0.39 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month would pay a Penny Symbol Fee to Remove Liquidity of \$0.39 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month would pay a Penny Symbol Fee to Remove Liquidity of \$0.30 per contract in Tier 3.

<sup>14</sup> Participants that executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month would pay a Penny Symbol Fee to Remove Liquidity of \$0.46 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month would pay a Penny Symbol Fee to Remove Liquidity of \$0.46 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month would pay a Penny Symbol Fee to Remove Liquidity of \$0.46 per contract in Tier 3.

tiered Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranges from \$0.39 to \$0.30 per contract<sup>15</sup> and is the same as the current Market Maker tiered Penny Symbol Fees to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker or Firm of \$0.46 per contract regardless of tier.<sup>16</sup> BX would no longer assess a fee to add liquidity for Market Maker orders, rather Participants would obtain the Maker Rebate regardless of contra-party.

#### *Non-Customers*

Today, Non-Customers receive neither a Penny Symbol Rebate to Add Liquidity nor a Penny Symbol Rebate to Remove Liquidity. Today, Non-Customers pay a Penny Symbol Fee to Add Liquidity of \$0.45 per contract. Today, Non-Customers pay a Penny Symbol Fee to Remove Liquidity of \$0.46 per contract.

With this proposal, Non-Customer orders would receive a Maker Rebate of \$0.12 per contract in all Penny Symbols. With this proposal, Non-Customer orders would pay a Penny Symbol Taker Fee of \$0.46 per contract.

The Exchange would begin to pay a Penny Symbol Maker Rebate for Non-Customer orders. Today, Non-Customer Orders receive no rebates for adding liquidity in Penny Symbols. The proposed Non-Customer Penny Symbol Taker Fee of \$0.46 per contract is higher than the Non-Customer Penny Symbol Fee to Add Liquidity of \$0.45 per contract and is the same as the Non-Customer Penny Symbol Fee to Remove Liquidity of \$0.46 per contract.

#### *Firms*

Today, Firms receive neither a Penny Symbol Rebate to Add Liquidity nor a Penny Symbol Rebate to Remove Liquidity. Today, Firms pay a Penny Symbol Fee to Add Liquidity of \$0.45 per contract. Today, Firms pay a Penny Symbol Fee to Remove Liquidity of \$0.46 per contract.

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<sup>15</sup> See note 13 above.

<sup>16</sup> See note 14 above.

With this proposal, Firm orders would receive a Maker Rebate of \$0.12 per contract in all Penny Symbols. With this proposal, Firm orders would pay a Penny Symbol Taker Fee of \$0.46 per contract.

The Exchange would begin to pay a Penny Symbol Maker Rebate for Firm orders. Today, Firm Orders receive no rebates for adding liquidity in Penny Symbols. The proposed Firm Penny Symbol Taker Fee of \$0.46 per contract is higher than the Firm Penny Symbol Fee to Add Liquidity of \$0.45 per contract and is the same as the Firm Penny Symbol Fee to Remove Liquidity of \$0.46 per contract.

### *Customers*

Today, Customers receive a Penny Symbol Rebate to Add Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker or Firm which ranges from \$0.00 to \$0.20 per contract.<sup>17</sup> Today, Customers receive a Penny Symbol Rebate to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker, Customer or Firm which ranges from \$0.00 to \$0.35 per contract.<sup>18</sup> Today, Customers pay a Penny Symbol Fee to Add Liquidity when trading against a Customer of \$0.39 per

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<sup>17</sup> Participants that executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month receive no Penny Symbol Rebate to Add Liquidity in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month receive a \$0.10 per contract Penny Symbol Rebate to Add Liquidity in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month receive a \$0.20 per contract Penny Symbol Rebate to Add Liquidity in Tier 3.

<sup>18</sup> Participants that executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month would receive no Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month would receive a \$0.25 per contract Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month will receive a \$0.35 per contract Penny Symbol Rebate to Remove Liquidity in Tier 3.

contract, regardless of tier.<sup>19</sup> Today, Customers do not pay a Penny Symbol Fee to Remove Liquidity.

With this proposal, Customer orders would receive a \$0.30 per contract Penny Symbol Maker Rebate. With this proposal, Customer orders would pay a \$0.46 per contract Penny Symbol Taker Fee, unless the Customer order removes liquidity in SPY, in which case the Taker Fee would be \$0.26 per contract.

The proposed new Penny Symbol Customer Maker Rebate of \$0.30 per contract is higher than the current Customer Rebates to Add Liquidity<sup>20</sup> and does not consider the contra-party. This proposal would no longer pay a Penny Symbol Customer rebate to remove liquidity with this pricing model. With this proposal, Customer orders would be assessed a Customer Taker Fee of \$0.46 per contract, except for SPY where a Customer order would pay a Taker Fee of \$0.26 per contract to remove liquidity. Today, Customer orders are not assessed a Penny Symbol Fee to Remove Liquidity. With this proposal, Customers would not pay to add liquidity, a Customer order would instead receive a rebate. Today, Customer orders are subject to the tiered Penny Symbol Fee to Add Liquidity when trading against a Customer of \$0.39 per contract, regardless of tier.<sup>21</sup>

#### Non-Penny Symbols

With respect to the impact on pricing for Non-Penny Symbols, the Exchange notes the below changes in pricing.

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<sup>19</sup> Participants that executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month would pay a \$0.39 per contract Penny Symbol Fee to Add Liquidity in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month would pay a \$0.39 per contract Penny Symbol Fee to Add Liquidity in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month would pay a \$0.39 per contract Penny Symbol Fee to Add Liquidity in Tier 3.

<sup>20</sup> See note 17 above.

<sup>21</sup> See note 19 above.

### *Lead Market Makers*

Today, Lead Market Makers are charged a \$0.50 per contract Non-Penny Fee to Add Liquidity when the Lead Market Maker is trading with any market participant other than a Customer. If the contra-party is a Customer, the Lead Market Maker is charged a higher Fee to Add Liquidity of \$0.95 per contract instead. Lead Market Makers are also currently charged a \$0.89 per contract Non-Penny Fee to Remove Liquidity when the Lead Market Maker is trading with any market participant other than a Customer. If the contra-party is a Customer, the Lead Market Maker is charged a Fee to Remove Liquidity ranging from \$0.89 to \$0.60 per contract depending on the volume tier achieved, as described in the Non-Penny Symbols Tier Schedule above. Lead Market Makers are currently not offered any rebates for adding or removing liquidity.

With this proposal, the Exchange will eliminate the contra-party qualifications and volume tiers for Lead Market Maker pricing in Non-Penny Symbols. Lead Market Makers would instead receive a flat Maker Rebate of \$0.45 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party. They would receive the proposed Maker Rebate for adding liquidity whereas today, they would be charged a fee for adding liquidity in Non-Penny Symbols. As proposed, Lead Market Makers would also be charged a flat Taker Fee of \$1.10 per contract for removing liquidity in Non-Penny Symbols, regardless of contra-party. The proposed fee would be higher than the current fee assessed to Lead Market Makers for removing liquidity in Non-Penny Symbols.

### *Market Makers*

Today, Market Makers are charged a \$0.50 per contract Non-Penny Fee to Add Liquidity when the Market Maker is trading with any market participant other than a Customer. If the contra-party is a Customer, the Market Maker is charged a higher Fee to Add Liquidity of \$0.95 per contract instead. Market Makers are also currently charged a \$0.89 per contract Non-Penny Fee to Remove Liquidity when the Market Maker is trading with any market participant other

than a Customer. If the contra-party is a Customer, the Market Maker is charged a Fee to Remove Liquidity ranging from \$0.89 to \$0.60 per contract depending on the volume tier achieved, as described in the Non-Penny Symbols Tier Schedule above. Market Makers are currently not offered any rebates for adding or removing liquidity.

With this proposal, the Exchange will eliminate the contra-party qualifications and volume tiers for Market Maker pricing in Non-Penny Symbols. Market Makers would instead receive a flat Maker Rebate of \$0.40 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party. They would receive this Maker Rebate for adding liquidity whereas today, they would be charged a fee for adding liquidity in Non-Penny Symbols. As proposed, Market Makers would also be charged a flat Taker Fee of \$1.10 per contract for removing liquidity in Non-Penny Symbols, regardless of contra-party. The proposed fee would be higher than the current fee assessed to Market Makers for removing liquidity in Non-Penny Symbols.

#### *Non-Customers*

Today, Non-Customers are charged a \$0.98 per contract Non-Penny Fee to Add Liquidity. Non-Customers are also currently charged a \$0.89 per contract Non-Penny Fee to Remove Liquidity. Non-Customers are currently not offered any rebates for adding or removing liquidity.

With this proposal, Non-Customers would be charged a Maker Fee of \$0.45 per contract for adding liquidity in Non-Penny Symbols, which is lower than the current Fee to Add Liquidity. Non-Customers would also be charged a Taker Fee of \$1.10 per contract for removing liquidity in Non-Penny Symbols, which is higher than the current Fee to Remove Liquidity.

#### *Firms*

Today, Firms are charged a \$0.98 per contract Non-Penny Fee to Add Liquidity. Firms are also currently charged a \$0.89 per contract Non-Penny Fee to Remove Liquidity. Firms are currently not offered any rebates for adding or removing liquidity.

With this proposal, Firms would be charged a Maker Fee of \$0.45 per contract for adding liquidity in Non-Penny Symbols, which is lower than the current Fee to Add Liquidity. Firms would also be charged a Taker Fee of \$1.10 per contract for removing liquidity in Non-Penny Symbols, which is higher than the current Fee to Remove Liquidity.

### *Customers*

Today, Customers trading with any market participant other than another Customer receive Non-Penny Rebates to Add Liquidity ranging from \$0.00 to \$0.20 per contract depending on the volume tier achieved, as described in the Non-Penny Symbols Tier Schedule above. If the contra-party is another Customer, the Customer is charged a Non-Penny Fee to Add Liquidity of \$0.85 per contract instead, regardless of tier. As described in the Non-Penny Symbols Tier Schedule above, Customers also currently receive a Non-Penny Rebates to Remove Liquidity of \$0.80 per contract, regardless of tier. This rebate is provided to Customers regardless of contra-party.

With this proposal, the Exchange will eliminate the contra-party qualifications and volume tiers for Customer pricing in Non-Penny Symbols. Customers would instead receive a flat Maker Rebate of \$0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party. Customers would receive the proposed Maker Rebate for adding liquidity whereas today, they would either receive a lower rebate or be charged a fee for adding liquidity in Non-Penny Symbols, depending on the contra-party. As proposed, Customers would also be charged a flat Taker Fee of \$0.65 per contract for removing liquidity in Non-Penny Symbols, regardless of counterparty. Customers would pay the proposed Taker Fee for removing liquidity whereas today, they would receive a rebate for removing liquidity in Non-Penny Symbols.

### Non-Customer

The Exchange proposes to relocate current note 1 of Options 7, Section 2, which describes a Non-Customer, to Options 7, Section 1 and provide, “The term ‘Non-Customer’ shall include a Professional, Broker-Dealer and Non-BX Options Market Maker.” The defined term

as proposed within Options 7, Section 1 is applicable to Options 7 pricing. Further, the Exchange proposes to remove references to note 1 within Options 7, Section 2(1), as described above, as well as within Options 7, Section 2(4).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>22</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>23</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' ... As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' ...."<sup>24</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the

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<sup>22</sup> 15 U.S.C. 78 f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>24</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).



securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>25</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Generally, the Exchange’s proposal will replace the existing fees and rebates in Options 7, Section 2(1) applicable to transactions in Penny and Non-Penny Symbols with a new maker/taker fee structure where market participants are assessed a rebate or lower fee for adding liquidity to the market, or charged a higher fee for removing liquidity from the market. As described above, the proposed pricing will no longer be tiered and will not consider the contra-party, unless otherwise specified, thereby reducing complexity in the Exchange’s Pricing Schedule. For the reasons discussed in the following paragraphs, the Exchange believes that the proposed fee structure will be beneficial to market participants and will encourage an active and liquid market in both Penny and Non-Penny Symbols on BX.

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<sup>25</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

## Penny Symbols

### *Lead Market Makers*

The proposal to amend Lead Market Maker Penny Symbol pricing is reasonable. The proposed Penny Symbol Maker Rebates for Lead Market Maker orders, for all Penny Symbols, are higher than the current Lead Market Maker Penny Symbol Rebate to Add Liquidity of \$0.11 per contract. Also, the proposed Penny Symbol Maker Rebates for Lead Market Maker orders do not consider the contra-party. The Exchange believes that these higher rebates will attract a greater amount of liquidity in all Penny Symbols to BX, which will benefit all market participants in the quality of order interaction. In addition, the Exchange's proposal to offer the Maker Rebate for Lead Market Makers of \$0.22 per contract in SPY and offer the Maker Rebate for Lead Market Makers of \$0.42 per contract in AAPL, IWM, GLD, QQQ, SLV, and TSLA, is reasonable for the reasons that follow. Today, BX segments its pricing as between Penny and Non-Penny Symbols. While the Exchange would pay a lower Maker Rebate of \$0.22 per contract in SPY as compared to the proposed Penny Symbol Maker Rebate for Lead Market Makers of \$0.29 per contract, the Exchange believes that the proposed SPY rebate is reasonable because Lead Market Makers would still be eligible to receive rebates for such orders, albeit at a lower amount than for other Penny Symbols under this proposal. Furthermore, the Exchange notes that the proposed SPY rebate of \$0.22 per contract will be significantly higher than the current rebate of \$0.11 per contract. As such, the Exchange believes that the proposed SPY rebate is set at an appropriate level that would continue to encourage Lead Market Makers to add liquidity in SPY. In addition, the Exchange believes that it is reasonable to pay a higher Maker Rebate of \$0.42 per contract in AAPL, IWM, GLD, QQQ, SLV, and TSLA as compared to the proposed Penny Symbol Maker Rebate for Lead Market Makers of \$0.29 per contract as the Exchange is seeking to incentivize greater order flow in these symbols to BX. These highly liquid Penny Symbols are subject to greater competition among options exchanges and, therefore, a higher rebate is necessary to attract this order flow. The proposed Penny Symbol

Taker Fee for Lead Market Maker orders of \$0.46 per contract is higher than the current Lead Market Maker tiered Penny Symbol Fees to Remove Liquidity when trading against a Customer which range from \$0.39 to \$0.30 per contract<sup>26</sup> and is the same as the current Lead Market Maker tiered Penny Symbol Fees to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker or Firm of \$0.46 per contract regardless of tier.<sup>27</sup> BX would no longer assess a fee to add liquidity for Lead Market Maker orders, rather Participants would obtain the Maker Rebate, notwithstanding the contra-party. The Exchange believes that the Taker Fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants.

The proposal is equitable and not unfairly discriminatory as all pricing would be uniformly assessed to similarly situated Participants for Penny Symbols. The Exchange believes that the proposed differentiation between Lead Market Makers and other market participants through the proposed Maker Rebate recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Lead Market Makers through their quoting obligations and their commitment of capital, unlike other market participants.<sup>28</sup> Furthermore, LMMs are subject to heightened quoting obligations compared to Market Makers.<sup>29</sup> Incentivizing Lead Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. The Exchange's proposal to offer a lower Maker Rebate for Lead Market Makers of \$0.22 per contract in SPY and offer a higher Maker Rebate for Lead Market Makers of \$0.42 per contract in AAPL, IWM, GLD, QQQ, SLV, and TSLA is equitable

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<sup>26</sup> See note 9 above.

<sup>27</sup> See note 10 above.

<sup>28</sup> See Options 2, Section 4.

<sup>29</sup> See Options 2, Section 4(j) (setting forth the 90% or higher quoting requirements for LMMs) and Section 5(d) (setting forth the 60% or higher quoting obligations for Market Makers).

and not unfairly discriminatory as the Exchange's proposal would be applied uniformly to similarly-situated Participants with quoting obligations.

#### *Market Maker*

The proposal to amend Market Maker Penny Symbol pricing is reasonable. The proposed Maker Rebates for Penny Symbol Market Maker orders, for all Penny Symbols, are higher than the current Market Maker Penny Symbol Rebate to Add Liquidity of \$0.10 and the proposed rebate does not consider the contra-party. The Exchange believes that these higher rebates will attract a greater amount of liquidity in all Penny Symbols to BX, which will benefit all market participants in the quality of order interaction. In addition, the Exchange's proposal to offer the Maker Rebate for Market Makers of \$0.22 per contract in SPY and offer the Maker Rebate for Market Makers of \$0.42 per contract in AAPL, IWM, GLD, QQQ, SLV, and TSLA, is reasonable for the reasons that follow. Today, BX segments its pricing as between Penny and Non-Penny Symbols. While the Exchange would pay a lower Maker Rebate of \$0.22 per contract in SPY as compared to the proposed Penny Symbol Maker Rebate for Market Makers of \$0.25 per contract, the Exchange believes that the proposed SPY rebate is reasonable because Market Makers would still be eligible to receive rebates for such orders, albeit at a lower amount than for other Penny Symbols under this proposal. Furthermore, the Exchange notes that the proposed SPY rebate of \$0.22 per contract will be significantly higher than the current rebate of \$0.10 per contract. As such, the Exchange believes that the proposed SPY rebate is set at an appropriate level that would continue to encourage Market Makers to add liquidity in SPY. In addition, the Exchange believes that it is reasonable to pay a higher rebate of \$0.42 per contract in AAPL, IWM, GLD, QQQ, SLV, and TSLA as compared to the proposed Maker Rebate for Market Makers of \$0.25 per contract as the Exchange is seeking to incentivize greater order flow in these symbols to BX. These highly liquid Penny Symbols are subject to greater competition among options exchanges and, therefore, a higher rebate is necessary to attract this order flow. The proposed Penny Symbol Taker Fee for Market Maker orders is higher than the current

Market Maker tiered Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranges from \$0.39 to \$0.30 per contract<sup>30</sup> and is the same as the current Market Maker tiered Penny Symbol Fee to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker or Firm of \$0.46 per contract regardless of tier.<sup>31</sup> BX would no longer assess a fee to add liquidity for Market Maker orders, rather Participants would obtain the Maker Rebate, notwithstanding the contra-party. The Exchange believes that the Taker Fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants.

The proposal is equitable and not unfairly discriminatory as all pricing would be uniformly assessed to similarly situated Participants for Penny Symbols. Market Makers add value through continuous quoting and are subject to additional requirements and obligations unlike other market participants.<sup>32</sup> Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. The Exchange's proposal to offer a lower Maker Rebate for Market Makers of \$0.22 per contract in SPY and offer a higher Maker Rebate for Market Makers of \$0.42 per contract in AAPL, IWM, GLD, QQQ, SLV, and TSLA is equitable and not unfairly discriminatory as the Exchange's proposal would be applied uniformly to similarly-situated Participants with quoting obligations.

#### *Non-Customers*

The proposal to amend Non-Customer Penny Symbol pricing is reasonable. The proposal would begin to pay a Penny Symbol Maker Rebate for Non-Customer orders. Today, Non-Customer Orders receive no rebates for adding liquidity in Penny Symbols. The Exchange believes that paying a rebate will attract a greater amount of liquidity to BX. The Non-Customer Penny Symbol Taker Fee of \$0.46 per contract is higher than the Non-Customer Penny Symbol

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<sup>30</sup> See note 13 above.

<sup>31</sup> See note 14 above.

<sup>32</sup> See Options 2, Sections 4 and 5.

Fee to Add Liquidity of \$0.45 per contract and is the same as the Non-Customer Penny Symbol Fee to Remove Liquidity of \$0.46 per contract. The Exchange believes that the Taker Fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants.

The proposal is equitable and not unfairly discriminatory as all pricing would be uniformly assessed to similarly situated Participants for Penny Symbols.

#### *Firms*

The proposal to amend Firm Penny Symbol pricing is reasonable. The proposal would begin to pay a Penny Symbol Maker Rebate for Firm orders. Today, Firm Orders receive no rebates for adding liquidity in Penny Symbols. The Exchange believes that paying a rebate will attract a greater amount of liquidity to BX. The Firm Penny Symbol Taker Fee of \$0.46 per contract is higher than the Firm Penny Symbol Fee to Add Liquidity of \$0.45 per contract and is the same as the Firm Penny Symbol Fee to Remove Liquidity of \$0.46 per contract. The Exchange believes that the Taker Fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants.

The proposal is equitable and not unfairly discriminatory as all pricing would be uniformly assessed to similarly situated Participants for Penny Symbols.

#### *Customers*

The proposal to amend Customer Penny Symbol pricing is reasonable. The proposed new Penny Symbol Customer Maker Rebate of \$0.30 per contract is higher than the current Customer Rebates to Add Liquidity<sup>33</sup> and does not consider the contra-party. The Exchange believes that these higher rebates will attract a greater amount of liquidity to BX. This proposal would no longer pay a Penny Symbol Customer rebate to remove liquidity with this pricing model. With this proposal, Customer orders would be assessed a Customer Taker Fee of \$0.46

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<sup>33</sup> See note 17 above.

per contract, except for SPY where a Customer order would pay a Taker Fee of \$0.26 per contract to remove liquidity. Today, Customer orders are not assessed a Penny Symbol Fee to Remove Liquidity. With this proposal, Customers would not pay to add liquidity, a Customer order would instead receive a rebate. Today, Customer orders are subject to the tiered Penny Symbol Fee to Add Liquidity when trading against a Customer of \$0.39 per contract, regardless of tier.<sup>34</sup> The Exchange believes that the Customer Taker Fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants. The Exchange notes that the proposed Taker Fee for Customers remains below similar fees assessed by another options exchange.<sup>35</sup>

The proposal is equitable and not unfairly discriminatory as all pricing would be uniformly assessed to similarly situated Participants for Penny Symbols. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants.

#### Non-Penny Symbols

##### *Lead Market Makers*

The Exchange believes that the proposed Lead Market Maker Non-Penny Symbol pricing is reasonable. As discussed above, Lead Market Makers would receive the proposed flat Maker Rebate of \$0.45 per contract for adding liquidity in Non-Penny Symbols whereas today, they would be charged a fee. The Exchange believes that the proposed Maker Rebate will attract a

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<sup>34</sup> See note 19 above.

<sup>35</sup> NYSE Arca Options (“Arca”) currently assesses Customers a Take Liquidity fee of \$0.49 per contract in Penny Issues. See Arca Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

greater amount of liquidity to BX to the benefit of all market participants. As proposed, Lead Market Makers would also be charged a flat Taker Fee of \$1.10 per contract for removing liquidity in Non-Penny Symbols. While the proposed Taker Fee would be higher than the current fees assessed to Lead Market Makers for removing liquidity in Non-Penny Symbols described above, the Exchange believes that the proposed fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants.<sup>36</sup>

The Exchange believes that its proposal is equitable and not unfairly discriminatory because the proposed pricing will apply uniformly to all similarly situated Participants for Non-Penny Symbols. The Exchange believes that the proposed differentiation between Lead Market Makers and other market participants through the proposed Maker Rebate recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Lead Market Makers through their quoting obligations and their commitment of capital, unlike other market participants.<sup>37</sup> In addition, LMMs are subject to heightened quoting obligations compared to Market Makers.<sup>38</sup> Incentivizing Lead Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

#### *Market Makers*

The Exchange believes that the proposed Market Maker Non-Penny Symbol pricing is reasonable. As discussed above, Market Makers would receive the proposed flat Maker Rebate of \$0.40 per contract for adding liquidity in Non-Penny Symbols whereas today, they would be charged a fee. The Exchange believes that the proposed Maker Rebate will attract a greater

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<sup>36</sup> The Exchange notes that the proposed Taker Fee is within the range of similar fees charged by other options exchanges. See, e.g., Arca Fees and Charges, Transaction Fee for Electronic Executions – Per Contract (assessing all market participants except Customers a Take Liquidity fee of \$1.10 per contract in Non-Penny Issues); and Nasdaq MRX (“MRX”) Pricing Schedule at Options 7, Section 3 (assessing all market participants except Priority Customers a \$1.10 per contract Taker Fee in Non-Penny Symbols).

<sup>37</sup> See Options 2, Section 4.

<sup>38</sup> See Options 2, Section 4.



amount of liquidity to BX to the benefit of all market participants. As proposed, Market Makers would also be charged a flat Taker Fee of \$1.10 per contract for removing liquidity in Non-Penny Symbols. While the proposed Taker Fee would be higher than the current fees assessed to Market Makers for removing liquidity in Non-Penny Symbols described above, the Exchange believes that the proposed fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants.<sup>39</sup>

The Exchange believes that its proposal is equitable and not unfairly discriminatory because the proposed pricing will apply uniformly to all similarly situated Participants for Non-Penny Symbols. Market Makers add value through continuous quoting and are subject to additional requirements and obligations unlike other market participants.<sup>40</sup> Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

#### *Non-Customers*

The Exchange believes that the proposed Non-Customer pricing in Non-Penny Symbols is reasonable. As discussed above, Non-Customers would be charged a Maker Fee of \$0.45 per contract for adding liquidity in Non-Penny Symbols, which is significantly lower than the current Fee to Add Liquidity. As such, the Exchange believes that the proposed Maker Fee will continue to attract Non-Customer order flow to BX to the benefit of all market participants. As proposed, Non-Customers would also be charged a flat Taker Fee of \$1.10 per contract for removing liquidity in Non-Penny Symbols. While the proposed Taker Fee would be higher than the current fee assessed to Non-Customers for removing liquidity in Non-Penny Symbols, the Exchange believes that the proposed fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants.<sup>41</sup>

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<sup>39</sup> See note 36 above.

<sup>40</sup> See Options 2, Sections 4 and 5.

<sup>41</sup> See note 36 above.

The Exchange believes that its proposal is equitable and not unfairly discriminatory because the proposed pricing will apply uniformly to all similarly situated Participants for Non-Penny Symbols.

#### *Firms*

The Exchange believes that the proposed Firm pricing in Non-Penny Symbols is reasonable. As discussed above, Firms would be charged a Maker Fee of \$0.45 per contract for adding liquidity in Non-Penny Symbols, which is significantly lower than the current Fee to Add Liquidity. As such, the Exchange believes that the proposed Maker Fee will continue to attract Firm order flow to BX to the benefit of all market participants. As proposed, Firms would also be charged a flat Taker Fee of \$1.10 per contract for removing liquidity in Non-Penny Symbols. While the proposed Taker Fee would be higher than the current fee assessed to Firms for removing liquidity in Non-Penny Symbols, the Exchange believes that the proposed fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants.<sup>42</sup>

The Exchange believes that its proposal is equitable and not unfairly discriminatory because the proposed pricing will apply uniformly to all similarly situated Participants for Non-Penny Symbols.

#### *Customers*

The Exchange believes that the proposed Customer pricing in Non-Penny Symbols is reasonable. As discussed above, Customers would receive a flat Maker Rebate of \$0.90 per contract for adding liquidity whereas today, they would either receive a lower rebate or be charged a fee for adding liquidity in Non-Penny Symbols, depending on the contra-party. The Exchange believes that these higher rebates will attract a greater amount of liquidity to BX. In addition, Customers would no longer receive a rebate for removing liquidity in Non-Penny

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<sup>42</sup> See note 36 above.

Symbols, and would instead be charged a flat Taker Fee of \$0.65 per contract under this proposal. While Customers would be assessed a fee, the Exchange notes that this fee will be lower than the \$1.10 per contract Taker Fees assessed to all other market participants under this proposal. The Exchange further notes that the proposed Customer Taker Fee remains below similar fees assessed by another options exchange.<sup>43</sup> Accordingly, the Exchange believes that the proposed Taker Fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants.

The Exchange believes that its proposal is equitable and not unfairly discriminatory because the proposed pricing will apply uniformly to all similarly situated Participants for Non-Penny Symbols. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants.

#### Non-Customer

The Exchange's proposal to relocate current note 1 of Options 7, Section 2 to Options 7, Section 1 and remove references to note 1 within Options 7, Section 2(1), as described above, as well as within Options 7, Section 2(4) is reasonable, equitable and not unfairly discriminatory. The amendments will bring greater clarity to the term Non-Customer throughout Options 7 pricing.

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<sup>43</sup> Arca currently assesses Customers a Take Liquidity fee of \$0.85 per contract in Non-Penny Issues (or \$0.67 per contract if the Customer is trading against an LMM). See Arca Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-market Competition

The proposed pricing does not impose an undue burden on intra-market competition as all pricing would be uniformly assessed to similarly situated market participants. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Lead Market Makers and Market Makers add value through continuous quoting<sup>44</sup> and are subject to

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<sup>44</sup> See Options 2, Sections 4 and 5.

additional requirements and obligations<sup>45</sup> unlike other market participants. Incentivizing Lead Market Makers and Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

#### Non-Customer

The Exchange's proposal to relocate current note 1 of Options 7, Section 2 to Options 7, Section 1 and remove references to note 1 within Options 7, Section 2(1), as described above, as well as within Options 7, Section 2(4) does not impose an undue burden on competition. The amendments will bring greater clarity to the term Non-Customer throughout Options 7 pricing.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>46</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>47</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>45</sup> See Options 2, Section 4.

<sup>46</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>47</sup> 17 CFR 240.19b-4(f)(2).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2021-009 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2021-009. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-BX-2021-009 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>48</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-07271 Filed: 4/8/2021 8:45 am; Publication Date: 4/9/2021]

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<sup>48</sup> 17 CFR 200.30-3(a)(12).